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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

FIREFIGHTERS LOCAL UNION No. 1784
AND MEMPHIS FIRE DEPARTMENT,
Petitioners,

vs.

CARL W. STOTTS, ET AL.,
Respondents.

AMICUS BRIEF OF DETROIT POLICE OFFICERS ASSOCIATION FILED IN SUPPORT OF PETITIONER FIREFIGHTERS LOCAL UNION 1784, et al.

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TABLE OF CONTENTS

		Page
I.	STATEMENT OF INTEREST	1
II.	SUMMARY OF ARGUMENT	3
	1. THE CONSTITUTION PROHIBITS THE JUDICIAL IMPOSITION OF RACIAL LAY-OFF QUOTAS IN PLACE OF A BONA FIDE PUBLIC EMPLOYEE SENIORITY SYSTEM	3
	2. TITLE VII DOES NOT SUPPORT A JUDICIAL REMEDY THAT UNNECESSARILY TRAMMELS THE INTERESTS OF INNOCENT EMPLOYEES BECAUSE OF THEIR RACE	4
III.	ARGUMENT	4
	1. THE CONSTITUTION PROHIBITS THE JUDICIAL IMPOSITION OF RACIAL LAY-OFF QUOTAS IN PLACE OF A BONA FIDE PUBLIC EMPLOYEE SENIORITY SYSTEM	4
	A. The Constitutional Standards for Race Conscious Remedies Have Been Set by *Bakke* and *Fullilove*	5
	B. The District Court's Remedy Fails the Test of Strict Judicial Scrutiny	10
	2. TITLE VII DOES NOT SUPPORT A REMEDY WHICH UNNECESSARILY TRAMMELS THE INTERESTS OF INNOCENT EMPLOYEES BECAUSE OF THEIR RACE	12
IV.	CONCLUSION	17

TABLE OF AUTHORITIES

Federal Cases: **Page**

Bridgeport Guardians, Inc. v. *Bridgeport Civil Service Commission*, 482 1333 (2d Cir. 1973), *cert. denied*, 421 U.S. 991 (1975) 15, 16

Dayton Board of Education v. *Brinkman*, 443 U.S. 406 (1977) 4, 7

DeFunis v. *Odegarrd*, 416 U.S. 312 (1974) (Douglas dissenting) 11

Ford Motor Company v. *EEOC*, 102 S. Ct. 3057 (1982) 16

Franks v. *Bowman Transportation Company*, 424 U.S. 747 (1976) 7, 13

Fullilove v. *Klutznick*, 448 U.S. 448 (1980) 2, 3, 5, 8, 9, 10, 11

Hernandez v. *Texas*, 347 U.S. 475 (1954) 6

In re Griffiths, 413 U.S. 717, 721-722 (1973) 8

Kirkland v. *New York State Department of Correctional Services*, 520 F.2d 420 (2d Cir. 1975), *cert. den.*, 420 U.S. 823 (1976) 15-16

Regents of the University of Californ' v. *Bakke*, 438 U.S. 265 (1978) 2, 3, 5, 6, 7, 8, 9, 10

Stotts v. *Memphis Fire Department*, 679 F.2d 541 (6th Cir. 1982) 10, 15

Strauder v. *West Virginia*, 100 U.S. 303, 308 (1880) 6

Page

Swann v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971) 7

Teamsters v. *United States*, 431 U.S. 324 (1977) 13

Traux v. *Raich*, 239 U.S. 33, 41 (1915) 6

United Steelworkers v. *Weber*, 443 U.S. 193 (1979) .. 14, 15

White v. *Carolina Paper Board Corporation*, 564 F.2d 1073 (4th Cir. 1977) 16

Yick Wo v. *Hopkins*, 118 U.S. 356 (1886) 6

Constitutions:

U.S. Const. Amend V 5, 8, 11

U.S. Const. Amend XIV 3, 5, 7, 12, 17

Federal Statutes:

42 U.S.C. § 1981 11

42 U.S.C. § 1983 11

42 U.S.C. § 2000e(a) (f) 13

42 U.S.C. § 2000e-2(h) 4, 13

42 U.S.C. § 2000e-2(i) 12

42 U.S.C. § 2000e-2(j) 4

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1. STATEMENT OF INTEREST

The Detroit Police Officers Association is the recognized bargaining agent for approximately 2,500 police officers of the City of Detroit, Michigan. The DPOA files this Amicus Brief to state its position on legal and constitutional issues of growing significance. DPOA contends that both Title VII and the Constitution prohibit layoff procedures, whether or not by order of a Federal Court, which circumvent lawfully adopted state seniority systems and target individual employees for termination based upon race, rather than seniority.

This Court must now resolve these issues in the context of the City of Memphis' Fire Department. The problems of reductions in force, particularly in safety services, have become

increasingly prevalant throughout the United States, particularly in those regions of the northeast, midwest and south hardest hit by unemployment, thinning populations, and a resulting drop in state and local revenues. These factors, along with reduced federal assistance to cities, have forced dozens of municipal governments to cut back public services in order to live within their means. Those service cuts often mean reductions in force, particularly in the personnel-intense area of safety services.

The decision of the Supreme Court in this case may determine the fate of bona fide seniority systems for public employees throughout this nation. DPOA believes that the concept of seniority was protected by the Congress in the enactment of Title VII, and that any court order requiring an employee to forfeit vested rights gained under a bona fide seniority system because of his race violates the Fourteenth Amendment of the United States Constitution.

The particular distinction between the facts of these cases and other cases allowing "race conscious" remedies is that the "victims" of the remedy are readily identifiable individuals who, along with their families, will be subject to the economic burdens and social stigma of layoffs only because of their race.

In times of high unemployment, the burden of a layoff from a highly skilled and specialized job, such as firefighter or police officer, is particularly accute. It is a burden that is borne by the laid-off public servant as well as his family. But when that burden is imposed not because of the employee's relative qualifications or seniority, but simply because of his race, the stigma becomes unreasonably burdensome and clearly violates constitutional standards set forth by Justice Powell in *Regents of the University of California* v. *Bakke*, 438 U.S. 265 (1978) and a majority of this Court in *Fullilove* v. *Klutznick*, 448 U.S. 448 (1980).

A remedy which sets aside a lawfully adopted state seniority system, or a *bona fide* seniority system adopted through

collective bargaining, simply to achieve (or preserve) racial balance also exceeds the scope of a federal court's authority under Title VII of the 1964 Civil Rights Act.

The District Court's modification of the Memphis consent decree to permit race-conscious remedies, as affirmed by the Sixth Circuit violated the Fourteenth Amendment rights of effected white employees, and exceeded the Court's authority under Title VII.

II. SUMMARY OF ARGUMENT

1. THE CONSTITUTION PROHIBITS THE JUDICIAL IMPOSITION OF RACIAL LAYOFF QUOTAS IN PLACE OF A BONA FIDE PUBLIC EMPLOYEE SENIORITY SYSTEM.

In his opinion in *Bakke*, Justice Powell articulated a standard of strict judicial scrutiny for "race conscious" remedies that prefer one race over another, based upon the equal protection clause of the Fourteenth Amendment. That standard of strict scrutiny was adopted by a majority of the Court in *Fullilove*.

The Fourteenth Amendment prohibits a judicial remedy requiring racial balance in public employee layoffs in place of a "last hired, first fired" seniority layoff system implemented under State law or adopted through collective bargaining. Such a remedy may not survive strict judicial scrutiny where the identifiable and innocent "majority" employees are the subjects of a racial classification which causes them to lose their jobs. The abstract goal of preserving a racial balance is not a satisfactorily compelling government interest to justify such a racial classification under the Fourteenth Amendment.

2. TITLE VII DOES NOT SUPPORT A JUDICIAL REMEDY THAT UNNECESSARILY TRAMMELS THE INTERESTS OF INNOCENT EMPLOYEES BECAUSE OF THEIR RACE.

Congress specifically exempted *bona fide* seniority systems from challenge when it adopted Title VII. 42 U.S.C. § 2000e-2(h). Congress's intent in adopting Title VII was to provide equal *opportunity*, not to require racial balance. 42 U.S.C. § 2000e-2(j).

A judicial remedy adopted under Title VII which causes innocent employees to lose seniority rights, and their jobs, because of their race, in order to achieve or preserve a racial balance, exceeds the remedial powers allowed by Congress for the enforcement of Title VII.

III. ARGUMENT

1. THE CONSTITUTION PROHIBITS THE JUDICIAL IMPOSITION OF RACIAL LAYOFF QUOTAS IN PLACE OF A BONA FIDE PUBLIC EMPLOYEE SENIORITY SYSTEM.

The scope of a judicial remedy is limited by both the violation shown by the Plaintiffs, *Dayton Board of Education* v. *Brinkman*, 433 U.S. 406 (1977), as well as the constitutional limits upon governmental power applicable to all branches of government.

As a matter of law, this Court may not find that the types of "last hired, first fired" seniority systems used throughout this nation by state or local government, either under state law or through collective bargaining agreements, is a tool of racial discrimination subject to judicial relief.

In these cases the remedy allowed is particularly inappropriate since (1) the white employees laid off out of seniority order, because of their race, were not shown to be participants

in any scheme of racial discrimination, but are simply innocent victims of racial preference; and (2) the minority employees given preference from layoffs, despite lower seniority rights, have not been shown to be "victims" of past and specific acts of discrimination. In fact, the Consent Decree which the district court retroactively modified fails even to confess past discrimination in either hiring or promotion. In these cases, the District Court improperly acted to preserve a racial balance rather than to remedy specific acts of discrimination.

A. The Constitutional Standards for Race Conscious Remedies Have Been Set By Bakke and Fullilove.

Constitutional analysis used by a majority of this Court in a series of cases would suggest that the Fifth and Fourteenth Amendments do not allow the forfeiture of bona fide seniority rights simply to preserve a racial balance.

In *Regents of the University of California* v. *Bakke*, 438 U.S. 265 (1978), this Court set aside a racial preference program for admissions to a state medical school. The key to the Court's decision appeared to be the ability of Bakke to show that the burden of the racial preference fell upon identifiable "majority" applicants, who were denied admission only because of their race.

As with the remedy approved by the Court of Appeals in this case, the racial preference adopted by the University of California was not designed to provide a remedy to specific and proven victims of past discrimination, but rather was intended to encourage racial balance in order to satisfy more general social goals. Justice Powell, in his lead opinion, found that Title VI of the 1964 Civil Rights Act "must be held to prescribe only those racial classifications that would violate the Equal Protection Clause or the Fifth Amendment." 438 at 287. He then examined the historical development of Fourteenth Amendment's applicability to claims of racial or ethnic discrimination:

> "As the nation filled with the stock of many lands, the reach of the Clause was gradually extended to all ethnic groups seeking protection from official discrimination. See *Strauder* v. *West Virginia*, 100 U.S. 303, 308 (1880) (Celtic Irishman) (dictum); *Yick Wo* v. *Hopkins*, 118 U.S. 356 (1886) (Chinese); *Truax* v. *Raich*, 239 U.S. 33, 41 (1915) (Austrian resident aliens); *Korematsu*, *supra*, (Japanese); *Hernandes* v. *Texas*, 347 U.S. 475 (1954) (Mexican-Americans). The guarantees of equal protection, said the court in *Yick Wo*, are 'universal in their application, to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality; and the equal protection of the laws is a pledge of the protection of equal laws. 118 U.S. at 369."
>
> 438 U.S. at 292-93

In analyzing and rejecting the notion that racial classification, if "benign", may be made on behalf of a traditional racial minority, Justice Powell noted that:

> "The concepts of 'majority' and 'minority' necessarily reflect temporary arrangements and political judgments. As observed above, the white 'majority' itself is composed of various minority groups, most of which can lay claim to a history of prior discrimination at the hands of the State and private individuals. . . . There is no principled basis for deciding which group would merit 'heightened judicial solicitude' and which would not."
>
> 438 U.S. at 295-296.

Of partciular significance to the claims of Petitioners in this case was Justice Powell's focus upon the improper burden that "benign" racial classifications may have upon individual and innocent victims of such classifications:

> "[T]here is a measure of inequity in forcing innocent persons in Respondent's position to bear the burdens of redressing grievances not of their making."
>
> 438 at 298.

In the case of laid off but more senior "majority" public employees, the burden is clear and swift – the loss not only of seniority or educational opportunities but of a *job*.

In rejecting the specific racial quota adopted in *Bakke*, Justice Powell distinguished a series of cases which have allowed courts to formulate "race conscious" remedies for proven constitutional violations. In those cases the following elements were shown:

> (1) In school desegregation cases, such remedies were allowed because "[e]ach involved remedies for clearly determined constitutional violations. E.g., *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971)."; and
>
> (2) "[T]he scope of the remedies was not permitted to exceed the extent of the violations. E.g., *Dayton Board of Education* v. *Brinkman*, 433 U.S. 406 (1977)."; and
>
> (3) In certain employment discrimination cases, race-conscious remedies were allowed, such as the award of retroactive seniority only to "*the victims of discrimination* – not just by society at large, but by the respondent in that case."; and
>
> (4) Only where such an award was necessary " 'to make [the victims] whole for injuries suffered on account of unlawful employment discrimination.' " citing *Franks* v. *Bowman Transportation Company*, 424 U.S. 747 (1976).
>
> 438 U.S. at 301-02.

In concluding that the *Bakke* quota violated the Fourteenth Amendment, Justice Powell applied strict judicial scrutiny to an inherently suspect racial classification stating that:

> "Prefering members of any one group for no reason other than race or ethnic origin is discrimination for its own sake. This the Constitution forbids."
>
> 438 U.S. at 307.

In the context of the "strict scrutiny" of an inherently suspect racial classification, the classification may be supported only by a "compelling" government interest. As stated in *In re Griffiths*, 413 U.S. 717, 721-722 (1973), the suspect classification may be justified only when a government agency

> "show[s] that its purpose or interest is both constitutionally permissible and substantial, and that its use of the classification is 'necessary . . . to the accomplishment of its purpose or the safeguarding of its interest."

Justice Powell in *Bakke* noted that the Court had allowed racial classifications "at the expense of other innocent individuals" only upon "judicial, legislative, or administrative findings of constitutional or statutory violations." 538 U.S. at 307. Then the racial classification is allowable as a remedy because "the legal rights of the victims must be vindicated". 438 U.S. at 307. Even under those circumstances, "the remedial action usually remains subject to continuing oversight to *assure that it will work the least harm possible to other innocent persons competing for the benefit.*" 438 at 307. (Emphasis added.)

These constitutional limits upon race conscious remedies appear to have been adopted by a majority of this Court. In *Bakke*, the Chief Justice, along with Justices Stevens, Stewart, and Rehnquist, concluded that the University's Special Admissions Program violated Title VI of the Civil Rights Act of 1964 because of its racial exclusion of *Bakke*. Their opinion, written by Justice Stevens, specifically avoided reaching the constitutional issues.

In *Fullilove* v. *Krutznick*, 448 U.S. 448 (1980), the full court for the first time examined the *constitutionality* of a racial preference program (the minority set aside program adopted under the Public Works Employment Act of 1977, which required that 10% of that program's funds be expended through minority business enterprises). While the court held that the Act did not violate the Equal Protection concepts inherent in the Fifth Amendment, a majority of the court ap-

pears to adopt the "strict scrutiny" standard of Justice Powell in *Bakke* for the review of programs involving racial preference.

Chief Justice Berger, in an opinion joined by Justices White and Powell, noted that a program that employs racial or ethnic criteria, even in a remedial context, calls for a "most searching examination to make sure that it does not conflict with constitutional guarantees". 448 at 491. In his separate opinion Justice Powell repeated the view he expressed in *Bakke* that strict scrutiny should be applied. Justice Powell perceived the Chief Justice's opinion as "substantially in accord" with his own views. 448 U.S. at 496.

The opinion of the Chief Justice, joined in by Justices White and Powell, as well as the separate opinion of Justice Powell suggest that the minority set aside program was permissible only because of its limited impact upon "non-minority" contractors. The Chief Justice held that the act was neither under-inclusive or over-inclusive, 448 U.S. at 485-90, and satisfied the standard of a narrowly tailored remedy designed to correct specific past discrimination identified by Congress. The Chief Justice specifically noted that the program was not constitutionally defective since the actual burden shouldered by the non-minority firms was relatively light, amounting to less than 2.5% of annual construction spending. 448 U.S. at 484.

Three other Justices dissented, applying an even stricter constitutional review. Justice Stewart, joined by Justice Rehnquist argued that *all* racial classifications are suspect in that the Equal Protection Laws prohibit *any* statutory classification based on race. 448 U.S. at 523-27. Justice Stevens found that the statute was unconstitutional because it could not be fairly characterized as a "narrowly tailored" racial classification designed to remedy a specifically demonstrated violation. 448 U.S. at 553. He argued that racial classifications are "simply too pernicious to permit any but the exact connec-

tion between justification and classification." 448 U.S. at 537.

An examination of *Bakke* and *Fullilove* would indicate that a majority of the Court has endorsed strict judicial scrutiny of racial preference remedies. *Fullilover* represents statements by at least six Justices rejecting race conscious "remedies" which cannot survive genuine strict judicial scrutiny.

B. The District Court's Modification of the Consent Decree Fails the Test of Strict Scrutiny.

The analysis adopted by the Sixth Circuit in this case simply fails to relate the extreme remedy of emasculating a bona fide seniority system to any compelling government interest of remedying proven constitutional violations.

First, there has never been a judicial determination, or an admission of intentional discrimination by the City of Memphis and its Fire Department. The two consent decrees of 1974 and 1980 contain no admissions by the City of unlawful discrimination. To the contrary, in the 1974 consent decree, the City of Memphis denied "it has heretofore engaged in any pattern or practice of discrimination in hiring or promotion on the basis of race or sex . . ." In the 1980 decree the City noted that by entering into the consent decree, it did "not thereby admit any violations of law, rule, or regulation with respect to the allegations made by plaintiffs in their complaint." Nonetheless, the Sixth Circuit apparently construed the consent decrees as admissions of liability. *Stotts* v. *Memphis Fire Department*, 679 F.2d 541 (6th Cir. 1982), without support either in the actual consent decrees or in the law.

Second, there has been no showing that the minority employees of the city protected by the modified consent decree were the victims of past discrimination.

Instead of applying strict scrutiny, as articulated in ***Bakke*** and ***Fullilove***, the Sixth Circuit relied upon the more general

policy favoring settlement of Title VII cases, suggesting that such policy would be undermined if courts investigated the "facts underlying each party's positions." However, such an ambiguous and unwritten legislative policy, cannot be permitted to infringe upon the constitutional rights of the innocent victims of such a policy.

The Sixth Circuit also justified its refusal to engage in strict scrutiny by noting that "a consent decree, the preferred means of resolving an employment discrimination suit, does not decrease the power of a court to order relief which implicates the policies of Title VII and 42 U.S.C. Sections 1981 and 1983." 679 F.2d at 544. According to the Sixth Circuit, if a violation of 42 U.S.C. Section 1983 *had* been established, the court would have had the authority to invoke the supremacy clause to override the union's seniority provisions and state law. The Court therefore held that use of "the preferred means of resolving an employment discrimination act" did not decrease "the power of a court to order relief which vindicates the policies embodied within Title VII and 42 U.S.C. Sections 1981 and 1983." 679 F.2d at 544. Yet the District Court could not order such relief without evidence satisfying the test of strict judicial scrutiny. In this case, no such evidence was provided. The hypothetical power of the district court *if* such evidence was presented, does not support a race conscious layoff remedy ordered in this case *without* such evidence.

The Equal Protection Clause commands the *elimination* of racial barriers, not the creation of barriers to satisfy someone's theory as to how society ought to be organized. *DeFunis* v. *Odegarrd*, 416 U.S. 312 (1974) (Douglas dissenting). The District Court's use of racial preference to set aside a lawfully adopted and racially neutral seniority system established through collective bargaining violates "the Equal Protection component of the Due Process Clause of the Fifth Amendment". *Fullilove* v. *Klutznick*, 448 U.C. at 473. To the extent that the layoffs were implemented by local

government authorities, whether or not under order of the District Court, the use of the racial preference violated the Equal Protection Clause of the Fourteenth Amendment.

2. TITLE VII DOES NOT SUPPORT A REMEDY WHICH UNNECESSARILY DAMAGES INNOCENT EMPLOYEES BECAUSE OF THEIR RACE.

Both Congress and this Court have clearly restricted the ability of the courts or employers to set aside *bona fide* seniority systems for the sake of preserving racial balance. Both the Congress and this Court have been guided by principles of fairness which must protect innocent employees from job loss on account of their race.

The District Court and the Sixth Circuit has allowed the modification of the Memphis consent decree, at least in part, based upon its power to remedy employment discrimination under Title VII. Yet Congress has placed limits on Title VII which prohibit the unnecessary denial of bona fide seniority rights to innocent employees because of their race.

Section 703(j) of Title VII provides that Title VII does not require an employer "to grant preferential treatment to any individual or to any group because of the race . . . of such individual or group on account of an imbalance which may exist with respect to the total number of percentage of persons of any race . . . in comparison with the total number or percentage of persons of such race . . . in the available work force in any community, state, section, or other country." 42 U.S.C. § 2000e-2(i).

In this case, the Sixth Circuit dwelt not upon the specific need to remedy individual victims of past employment discrimination, but rather upon the apparent desire of the Court that the Memphis department reflect the racial composition of the community. The concern of the Sixth Circuit apparently was to seek "racial diversity in the supervisory ranks

of municipal government serving a multi-racial city, 679 F.2d at 560, rather than that specific victims of past discrimination be made whole.

Section 703(a) of the Act (42 U.S. § 2000e-2(h)) also indicates congressional intent to protect the function of bona fide seniority systems:

> "(h) Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment, pursuant to bona fide seniority or merit system. . ."

The Court of Appeals did not find that Memphis' "last hired, first fired" layoff system was anything less than bona fide.

In *Teamsters* v. *United States*, 431 U.S. 324 (1977), this Court found that Section 703(h) protects bona fide seniority systems, even if they unintentionally perpetuate pre-Act discrimination.[1] In *Franks* v. *Bowman Transportation Co., Inc.*, 424 U.S. 747 (1976), the Court allowed a remedy which awarded certain retroactive seniority rights to *identified victims* of past discrimination. Yet even in that case Justice Powell recognized the danger of tampering with a bona fide seniority system when the rights of innocent parties are placed in jeopardy:

> "[C]ompetitive seniority benefits, as the term implies, directly implicate the rights and expectations of perfectly innocent employees. The economic benefits awarded discrimination victims would be derived not at the expense of the employer but at the expense of other workers. Putting it differently, those disadvantaged – sometimes to the extent of losing their jobs entirely – are not the

[1] Title VII was applied to public employers in 1972. 42 U.S.C. § 2000e(a)(f).

> wrongdoers who have no claim to the chancellor's conscience, but rather are innocent third parties."
>
> 424 U.S. at 788-89 (Opinion by Powell, J., concurring in part and dissenting in part).

The Sixth Circuit attempted to discount the rights and expectancies of white employees who have been innocent themselves of discrimination, but who will bear a burden of lost jobs and lost promotional opportunities under the modified decree. The Sixth Circuit stated that "the expectation of non-minorities is based upon a pre-decree minority promotion ratio which presumptively was based on the City's discriminatory promotional practices." 679 F.2d at 556.

Justice Powell specifically rejected this logic in his opinion in *Franks*:

> "Some commentators have suggested that the expectations of incumbents somehow may be illegitimate because they result in past discrimination against others. Such reasoning is badly flawed. Absent some showing of collusion, the incumbent employee was not a party to the discrimination by the employer. Acceptance of the job when offered hardly makes one an accessory to a discriminatory failure to hire someone else. Moreover, the incumbent's expectancy does not result from discrimination against others, but is based on his own efforts and satisfactory performance."
>
> 424 U.S. at 788-79, n.7. (Citations omitted).

In *United Steelworkers* v. *Weber*, 443 U.S. 193 (1979), the court upheld a racial quota voluntarily negotiated between a *private* employer and a labor union, which set aside certain slots in a job training program for minority employees. In Justice Brennan's opinion for the majority, he noted that a key factor in winning the Court's approval was that "the plan does not unnecessarily trammel the interests of the white employees. The plan does not require the discharge of white

workers and their replacement with new black hirees." 443 U.S. at 208.

In this case, the District Court's injunction required the discharge of certain white employees in place of less senior minority employees. 679 F.2d at 977, n.14. As such, the District Court's order unnecessarily trammeled the rights of the more senior white employees, resulting in their discharge. Certainly *Weber* does not support plaintiff's claim that Title VII permits this extreme remedy.

This Court has never ruled on the permissibility of racial quotas imposed on or by public employers with regard to promotional or other seniority rights. Yet several circuit courts have restricted such quotas, where not shown as necessary to remedy specific victims of past promotional discrimination. In *Bridgeport Guardians, Inc.* v. *Bridgeport Civil Service Commission*, 482 F.2d 1333 (2nd Cir. 1973), *cert. den.*, 421 U.S. 991 (1975), black patrolmen sought to restrain the City's discriminatory employment practices. The district court imposed hiring and promotional quotas. The Second Circuit, in reversing the promotional quota, noted the effect on innocent white employees:

> "[T]he imposition of quotas will obviously discriminate against those Whites who have embarked upon a police career with the expectation of advancement only to be now thwarted because of their color alone. The impact of the quota upon these men would be harsh and can only exacerbate rather than diminish racial attitudes. . . . We see no purpose in curing a past mischief by imposing a new one which is deliberately tainted."
>
> 482 F.2d at 1341. (Citations omitted).

In *Kirkland* v. *New York State Department of Correctional Services*, 520 F.2d 420 (2d Cir. 1975), *cert. den.*, 429 U.S. 823 (1976), the Second Circuit again refused to affirm a promotional quota which denied promotions to law enforcement officers solely because of their race:

> "A hiring quota deals with the public at large, none of whose members can be identified individually in advance. The quota placed upon a small number of readily identifiable candidates for a promotion is an entirely different matter. Both these men and the court know in advance that regardless of their qualifications and standing in the competitive examination, some of them may be bypassed for advancement solely because they are white." 520 F.2d at 429.

When a racial quota is applied to public employee layoffs, the employees' job, not simply his promotion, is at stake. Certainly the considerations outlined by the Second Circuit in *Brideport Guardians, Inc.* and *Kirkland* are even more significant when seen in the context of layoffs. *See also White* v. *Carolina Paper Board Corporation*, 564 F.2d 1073 (4th Cir. 1977).

The Court's opinion in *Ford Motor Company* v. *EEOC*, 102 S. Ct. 3057 (1982), appears to focus upon the same rights which Petitioners in this case assert: the rights of innocent employees who may be victimized by race conscious remedies. In *Ford* the court rejected a rule adopted by the district court which prohibited the tolling of accrued back pay when an employer charged with violating Title VII unconditionally offered a claimant the job previously denied. The question was whether or not an employer was required to offer the claimant seniority retroactive to the date of the alleged discrimination, despite a previous and unaccepted offer of employment. In her opinion for the Court, Justice O'Connor stated that the rejected rule

> "threatens the interests of other, innocent employees by disrupting the established seniority heirarchy, with the attendant risk than an innocent employee will be unfairly laid off or disadvantaged because a Title VII claimant unfairly has been granted seniority."
>
> 102 S. Ct. at 3070.

Congress did not intend by the adoption of Title VII to disrupt bona fide seniority systems, including layoff procedures implemented in order of seniority. Nor did Congress intend to allow racial preferences in layoffs in order to achieve or preserve a racial balance, particularly where the preferred employees have not been shown to be the victims of specific acts of discrimination. This Court must set aside judicial remedies adopted under Title VII which exceed Congress' clear intent in adopting that statute.

IV. CONCLUSION

Public employee layoffs never seem to occur without difficult public debate, particularly when police and fire personnel and the services they provide are cut. Our cities need not be burdened by a second and rankerous level of public debate on the issue of racial preference and quotas.

The "last hired, first fired" concept is based upon long experience and tradition, and has been implemented through racially neutral collective bargaining agreements and laws adopted by the states and local governments. It provides an orderly and sensible method of dealing with difficult community and political problems.

Judicial tampering with seniority order layoffs in the name of racial balance creates division and disorder. It separates public employees by race. It can destroy the morale of public employees and the confidence of the public. More significantly – race discrimination in the context of layoffs victimizes and stigmatizes innocent and dedicated public employees solely because of their race. This burden placed on the victims of racial balance is wholly contrary to the traditions of equal treatment and opportunity embodied in our Constitution and expressed by Congress in Title VII.

This Court must announce a firm standard which is consistent with the plain language of the Fourteenth Amendment

and with Title VII, and which clearly indicates that the goal of racial balance does not justify the type of racial discrimination against innocent and identifiable individuals which is expressly prohibited by our Constitution and Title VII.

Respectfully submitted,

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